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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

GARY WEISS et al.,

Plaintiffs, Cross-defendants
and Respondents,

v.

ANTONIA A. SALAZAR,

Defendant, Cross-complainant
and Appellant.

C066303

(Super. Ct. No. 165406)

Defendant and cross-complainant Antonia A. Salazar filed a timely appeal in propria persona from the judgment entered (following a trial to the court) in favor of plaintiff Gary Weiss granting reformation, and in favor of cross-defendants Gary and Amelia Weiss¹ (except as to property tax payments, for

¹ Apparently Amelia Weiss was formerly married to Gary Weiss and adopted the new married name of Morris in 2004, but we will adhere to the name that appears in the cross-complaint. For ease of reference, we will refer to the Weisses at times by their first names; no disrespect is intended.

which the judgment directed that Salazar be given credit). Salazar questions the judgment in several respects, none of which have merit. The Weisses assert this appeal is frivolous and request sanctions. We shall affirm the judgment and deny the request for sanctions.

FACTUAL AND PROCEDURAL BACKGROUND

Gary Weiss filed the verified complaint in February 2009 seeking reformation of the sales contract, the grant deed, and the deed of trust involved in the 2006 sale of a mobile home and lot on Lamoine Drive in Redding to Salazar in exchange for a note (the payments on which were to commence a year after the sale). Gary alleged these documents contained the wrong book/page numbers and lot numbers, and that Salazar had refused to execute corrected documents. Gary also sought to accelerate the balance due on the promissory note (on which Salazar had made only three payments), and to recover property taxes she had failed to pay (as obliged under the sales contract).

Salazar filed a cross-complaint in April 2009 in propria persona against Gary and Amelia Weiss. She alleged the Weisses had given her a promissory note for \$42,400 as part of *their* purchase from her of a mobile home and lot on Gulch Trail in Redding in March 2003. She reconveyed the note and deed of trust to them in July 2006 as a payment for the Lamoine Drive property. She also alleged that the Weisses had assumed responsibility for unpaid property taxes in the 2003 sales contract, and had agreed in July 2006 to apply her mortgage

payments on the Lamoine Drive property to taxes still delinquent on both properties. Although the pleading is not entirely clear, Salazar contended the Weisses were in breach of contract and committed fraud in failing to pay the accrued taxes on the Gulch Trail property, in failing to pay the interest that had accrued on the note's principal before she reconveyed it, and in lacking title to the Lamoine Drive property when Gary purported to convey it to her.

The testimony at the first day of trial in this matter is mostly devoted to matters not relevant to this appeal. We note only that at the time of the Lamoine Drive transaction, the Weisses had offered the property first to their tenants for \$105,000. The county assessor-recorder's office notified Gary in August 2007 that there was an incorrect legal description in the 2006 grant deed.

Apparently there was an unreported second day of trial testimony. As a result, we deem the trial court's findings supported by substantial evidence, and Salazar is accordingly barred from challenging them on this basis because we must presume "that the unreported trial testimony would demonstrate the absence of error"; she is thus limited to errors that appear on the face of the record. (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992; accord, *Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324.)² Salazar's status as a self-represented litigant does not

² The provision of a partial transcript does not prevent the application of this rule. Where a party seeks to challenge the

change this rule. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

In its statement of decision, the trial court found that there had been a mutual mistake regarding the identification of the Lamoine Drive property, for which reason it granted reformation of the deed, deed of trust, and sales contract. Salazar does not present any argument contesting this element of the trial court's ruling, and we therefore do not consider it further. (*Imagistics Internat., Inc. v. Department of General Services* (2007) 150 Cal.App.4th 581, 591, fn. 8, 593 (*Imagistics Internat.*)).)

With respect to the Lamoine Drive transaction in 2006, the trial court found that *both* parties were in breach of their respective obligations. It declined on that basis to find *either* party entitled to damages for breach of contract. It also found that the purchase price stated in the 2006 Lamoine Drive sales contract already took into account a credit against the value of the property for the reconveyed 2003 note, because the amount of the payments due on the 2006 note (about \$495) reflected amortization of the purchase price and not the purchase price less the amount of the reconveyed 2003 note.

sufficiency of the evidence, there is an appellate duty to summarize *all* the evidence in the record, and supply a record adequate for this purpose. The failure to fulfill these duties thus forfeits the argument. (*Nielsen v. Gibson, supra*, 178 Cal.App.4th at p. 324; *Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.)

Moreover, in a "Beneficiary's Demand" letter dated December 2007, Salazar had offered to pay Gary \$67,500 to satisfy the note in exchange for proper title.

Regarding the 2003 Gulch Trail transaction, the trial court noted that the Weisses admitted being in breach of their obligations under the note. However, it found these contractual obligations had been modified as part of the 2006 transaction, which had included the superseding tax agreement and the reconveyance of the note; this resulted in the waiver or relinquishment of Salazar's claims for the failure to pay interest or taxes. It also found that Salazar's failure to make any payments on her note to the Weisses was a breach of her obligations under the tax agreement, which precluded her from recovering damages for the failure of the Weisses to credit the payments to the accrued outstanding taxes. However, the court directed that Salazar be given credit against the purchase price of the Lamoine Drive property for payments she had made directly to the tax agencies.³

Finally, the trial court concluded that Salazar had not presented any evidence that Gary knowingly or recklessly included the wrong property description in the documents. This defeated Salazar's claims of fraud.

³ Receipts for these payments apparently appear in Salazar's trial exhibits N and O.

DISCUSSION

I. Breach of Contract and Fraud

The heading of the first section of the argument in Salazar's brief asserts the evidence demonstrated that Gary knew he did not have legal title to the property he conveyed to her in 2006. We are not obliged to respond to tangential arguments appearing under this heading that are not related to this premise. (*Imagistics Internat.*, *supra*, 150 Cal.App.4th at p. 593, fn. 10; *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830, fn. 4.) Thus, to the extent there are "lurking" arguments that we do not expressly address, they are forfeited.

In connection with this first heading, Salazar appears to argue that *she* could not be found in breach of any of the contracts between the parties because the Weisses were in breach. The point of this argument is unclear, as the trial court did not find her liable for any breach of contract. We assume (in light of the tenor of the rest of the argument under this heading) that Salazar is claiming contractual entitlement to the accrued interest on the 2003 note, payment of the outstanding delinquent taxes, and acceptance of her offer contained in the 2007 Beneficiary Demand letter (citing Civil Code section 1512⁴ in connection with the latter claim as

⁴ Civil Code section 1512 provides, "If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties."

demonstrating legal error on the face of the judgment). The first two of these arguments simply ignore the trial court's findings that *Salazar also* was in breach of the contracts and thus could not recover any damages, and the 2006 transaction resulted in her waiver or relinquishment of her contractual rights under the 2003 note. As she cannot attack the evidentiary sufficiency of the trial court's findings, they are an insurmountable obstacle to her claims. As for her invocation of the statute, it serves to excuse nonperformance of a party to a contract that is the cause of the other party. (*Titus v. Lawndale School Dist.* (1958) 157 Cal.App.2d 822, 835, disapproved on a separate ground in *Barthuli v. Board of Trustees* (1977) 19 Cal.3d 717, 721-722.) That Gary initially provided what turned out to be a defective deed did not prevent Salazar from performing her obligations under the 2006 sales contract; she simply chose not to perform. Furthermore, Gary repeatedly tendered corrected documents that she refused to execute. The statute consequently does not have any application to Salazar. These arguments are therefore frivolous.

On the question of fraud, Salazar simply makes the contradictory insistence that she "made a clear showing" that Gary knew or recklessly disregarded the truth of his statements. The trial court found otherwise, and she cannot countermand this finding in the absence of a full reporter's transcript. The claim is thus frivolous.

II. Characterization of the Reconveyed Note and Deed of Trust

The heading for this section of Salazar's opening brief simply reads, "Appellant Is Entitled to As a Matter of Law." The gist of the argument is that the trial court's finding that the contractual sales price in the 2006 Lamoine Drive transaction *already* reflected a credit for the reconveyed 2003 note is not supported by the evidence, focusing solely on the language of the 2006 sales agreement itself. However, as we have already stated, Salazar is foreclosed from challenging the sufficiency of the evidence. The trial court reasonably relied on the amount of the payments under the note to determine they reflected the amortization of the full *contract* price, and thus an inferred intention that the note was not to be credited against that price. (We have also noted above the evidence of Salazar's 2007 Beneficiary Demand letter offering the full amount of the contract price.) Once again, her argument is frivolous.

III. Sanctions

As noted above, in their joint brief the Weisses requested sanctions for a frivolous appeal. However, they have failed to file a motion supported with a declaration establishing the amount of any sanctions sought. (Cal. Rules of Court, rule 8.276(b).) As a result, their request for sanctions is not properly before us.

Even if we were to consider the issue of sanctions on our own motion (Cal. Rules of Court, rule 8.276(a)), we do not think the equities of the situation demand the imposition of sanctions

even though all of Salazar's arguments would have appeared utterly without merit to any reasonable attorney. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) While it is proper to sanction a self-represented party for pursuing a frivolous appeal (*Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 193), there should be some indication that the party is aware of the groundless nature of the appeal (e.g., *ibid.* [party possessed "sophistication" in appellate practice far beyond that of an ordinary layperson]; *Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121 [both hearing officer and trial court had informed litigant that grounds for his challenge to discipline were baseless, yet he pursued appeal]) or is seeking only to harass the other party, the alternate basis for an award of sanctions under *In re Marriage of Flaherty*, *supra*, 31 Cal.3d at page 650 (e.g., *Banks v. Dominican College* (1995) 35 Cal.App.4th 1545, 1558-1559 [not only did the appellant graduate from a "legal studies program," she had pursued baseless claims "for years" after a battery of retained counsel withdrew on ethical grounds, and litigated in "unbalanced and bizarre" way])).

The trial court demonstrated both sides had breached their duties under the various contracts between them (also jointly abjuring the services of an experienced escrow agent who presumably could have avoided the error in the property description in the first place), and thus this litigation was a necessary result. Further, the record does not indicate the

appeal was solely for the purpose of delay rather than a sincere pursuit of a remedy for ill-perceived error. We therefore decline to exercise our discretion to award sanctions.

DISPOSITION

The judgment is affirmed. The request for sanctions is procedurally barred, and we decline to award them on our own motion. Respondents Gary Weiss and Amelia Weiss are awarded their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

_____, BUTZ, J.

We concur:

_____, RAYE, P. J.

_____, DUARTE, J.